



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 5899-99
19 September 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability, vice discharged with entitlement to disability severance pay.

2. The Board, consisting of Messrs. Ensley, Schultz and Swarens., reviewed Petitioner's allegations of error and injustice on 24 August 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was evaluated by a medical board on 13 August 1998, and given diagnoses of bilateral patellofemoral pain syndrome and pes anserine bursitis. The report of an MRI without contrast, dated 17 August 1998, indicates that there was disc desiccation with mild degenerative disc changes at the L5-S1 level, and a generalized 3-4 mm disc bulge, as well as a minimal central disc protrusion at the L4-L5 level. Those findings were characterized as "non-compromising". An addendum to the medical board report, which is not filed with Petitioner's disability evaluation proceedings, indicates that in addition to the knee condition, he had chronic low back pain without radiation, and with numbness and

tingling of the lower extremities. The back condition was resistant to conservative treatment. The author of the addendum did not think there was significant evidence of a "surgical lesion". On 16 November 1998, the Physical Evaluation Board (PEB) made preliminary findings that Petitioner was unfit for duty because of the knee condition, which it rated at 10% under Department of Veterans Affairs (VA) code 5299-5003. The bursitis was classified as a category II condition, and the chronic lower back pain was not addressed. Petitioner accepted the findings on 10 December 1998, and the President, PEB, published the Notification of Decision letter on 15 December 1998, directing that Petitioner be discharged by reason of physical disability. In a report dated 21 December 1998, a civilian spine surgeon indicated that Petitioner had discogenic mechanical back pain and herniated discs at the L4-5 and L5-S1. Petitioner advised the surgeon that he had pain every day. He had to stop and limit his activities, but was able to work most of the time. Dressing himself caused significant pain, and pain prevented him from lifting heavy objects, as well as walking for more than an hour at a time and from sitting for "more than a few minutes at a time." In addition, he took narcotic medication three times a day to control his pain. On 21 December 1998, Petitioner advised his representative in Congress that he had problems with his back, which the "military blew it off." He stated that in addition to his knee condition, he had two herniated discs in his lower back, which the military didn't acknowledge, and that he did not want to be discharged while in bad health and without compensation for his back condition. The congressman was advised by the Director, Naval Council of Personnel Board, in effect, that Petitioner had the right to submit a petition to the Board for Correction of Naval Records if he believed that an error or injustice existed in his case. Petitioner was discharged with entitlement to disability severance pay on 27 January 1999. On 16 March 1999, the aforementioned spine surgeon recommended that Petitioner undergo an anterior lumbar discectomy and fusion at L4-5 and L5-S1, and possibly a posterior fusion from L4 to S1 with instrumentation.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner had a significant back condition which rendered him unfit for duty at the time of his discharge from the Navy. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged from the Navy on 27 January 1999.

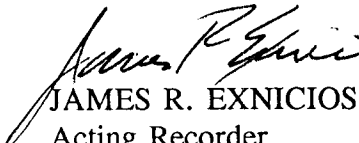
b. That Petitioner's naval record be further corrected to show that he was released from active duty on 27 January 1999, and transferred to the Temporary Disability Retired List the following day, pursuant to 10 U.S. Code 1202, with a combined disability rating of 30%, for patellofemoral pain syndrome, 10%, VA code 5299-5003, and intervertebral disc syndrome, L4-5 and L5-S1, 20%, VA code 5293.

c. That Petitioner be afforded a periodic physical examination as soon as practicable.
Current address: [REDACTED]


. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director